

SHB 1793 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED AND ENGROSSED 4/8/11

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) One of the goals of the juvenile justice system is to
5 rehabilitate juvenile offenders and promote their successful
6 reintegration into society. Without opportunities to reintegrate,
7 juveniles suffer increased recidivism and decreased economic function.

8 (2) The unrestricted dissemination of juvenile records can hinder
9 social reintegration when inaccurate, outdated, or personal information
10 regarding the juvenile remains in the public realm.

11 (3) Limiting the number of mechanisms for accessing juvenile
12 records and the number of places where they may be housed can increase
13 overall public record accuracy while promoting rehabilitation and
14 integration.

15 (4) The public has an interest in accessing information relating to
16 juvenile records for public safety and research purposes.

17 (5) The public's legitimate interest in accessing personal
18 information must be balanced with the rehabilitative goals of the
19 juvenile justice system. All benefit when former juvenile offenders,
20 after paying their debt to society, reintegrate and contribute to their
21 local communities as productive citizens.

22 (6) It is the intent of the legislature to balance the
23 rehabilitative and reintegration needs of an effective juvenile justice
24 system with the public's need to access personal information for public
25 safety and research purposes.

26 NEW SECTION. **Sec. 2.** The administrative office of the courts
27 shall convene a work group of stakeholders to develop recommendations
28 that would cost-effectively restrict the public access to juvenile
29 records where an individual has met the statutory requirements of RCW

1 13.50.050(12) and without requiring individuals who are the subject of
2 the records to file a motion to seal in juvenile court. The work group
3 shall also develop recommendations that would cost effectively restrict
4 public access to records related to diversions entered into in criminal
5 matters. The members of the work group shall be representatives from
6 the administrative office of the courts, the judicial information
7 systems data dissemination committee, the association of clerks, the
8 Washington defender association, the Washington association of
9 prosecuting attorneys, the Washington state patrol, the association of
10 juvenile court administrators, the Washington association of criminal
11 defense lawyers, the juvenile rehabilitation administration within
12 DSHS, and a member of the Washington state bar association juvenile law
13 section. The work group shall develop recommendations and report to the
14 appropriate committees of the legislature by December 1, 2011.

15 **Sec. 3.** RCW 13.50.050 and 2010 c 150 s 2 are each amended to read
16 as follows:

17 (1) This section governs records relating to the commission of
18 juvenile offenses, including records relating to diversions.

19 (2) The official juvenile court file of any alleged or proven
20 juvenile offender shall be open to public inspection, unless sealed
21 pursuant to subsection (12) of this section.

22 (3) All records other than the official juvenile court file are
23 confidential and may be released only as provided in this section, RCW
24 13.50.010, 13.40.215, and 4.24.550.

25 (4) Except as otherwise provided in this section and RCW 13.50.010,
26 records retained or produced by any juvenile justice or care agency may
27 be released to other participants in the juvenile justice or care
28 system only when an investigation or case involving the juvenile in
29 question is being pursued by the other participant or when that other
30 participant is assigned the responsibility for supervising the
31 juvenile.

32 (5) Except as provided in RCW 4.24.550, information not in an
33 official juvenile court file concerning a juvenile or a juvenile's
34 family may be released to the public only when that information could
35 not reasonably be expected to identify the juvenile or the juvenile's
36 family.

1 (6) Notwithstanding any other provision of this chapter, the
2 release, to the juvenile or his or her attorney, of law enforcement and
3 prosecuting attorneys' records pertaining to investigation, diversion,
4 and prosecution of juvenile offenses shall be governed by the rules of
5 discovery and other rules of law applicable in adult criminal
6 investigations and prosecutions.

7 (7) Upon the decision to arrest or the arrest, law enforcement and
8 prosecuting attorneys may cooperate with schools in releasing
9 information to a school pertaining to the investigation, diversion, and
10 prosecution of a juvenile attending the school. Upon the decision to
11 arrest or the arrest, incident reports may be released unless releasing
12 the records would jeopardize the investigation or prosecution or
13 endanger witnesses. If release of incident reports would jeopardize
14 the investigation or prosecution or endanger witnesses, law enforcement
15 and prosecuting attorneys may release information to the maximum extent
16 possible to assist schools in protecting other students, staff, and
17 school property.

18 (8) The juvenile court and the prosecutor may set up and maintain
19 a central recordkeeping system which may receive information on all
20 alleged juvenile offenders against whom a complaint has been filed
21 pursuant to RCW 13.40.070 whether or not their cases are currently
22 pending before the court. The central recordkeeping system may be
23 computerized. If a complaint has been referred to a diversion unit,
24 the diversion unit shall promptly report to the juvenile court or the
25 prosecuting attorney when the juvenile has agreed to diversion. An
26 offense shall not be reported as criminal history in any central
27 recordkeeping system without notification by the diversion unit of the
28 date on which the offender agreed to diversion.

29 (9) Upon request of the victim of a crime or the victim's immediate
30 family, the identity of an alleged or proven juvenile offender alleged
31 or found to have committed a crime against the victim and the identity
32 of the alleged or proven juvenile offender's parent, guardian, or
33 custodian and the circumstance of the alleged or proven crime shall be
34 released to the victim of the crime or the victim's immediate family.

35 (10) Subject to the rules of discovery applicable in adult criminal
36 prosecutions, the juvenile offense records of an adult criminal
37 defendant or witness in an adult criminal proceeding shall be released
38 upon request to prosecution and defense counsel after a charge has

1 actually been filed. The juvenile offense records of any adult
2 convicted of a crime and placed under the supervision of the adult
3 corrections system shall be released upon request to the adult
4 corrections system.

5 (11) In any case in which an information has been filed pursuant to
6 RCW 13.40.100 or a complaint has been filed with the prosecutor and
7 referred for diversion pursuant to RCW 13.40.070, the person the
8 subject of the information or complaint may file a motion with the
9 court to have the court vacate its order and findings, if any, and,
10 subject to subsection (23) of this section, order the sealing of the
11 official juvenile court file, the social file, and records of the court
12 and of any other agency in the case.

13 (12)(a) The court shall not grant any motion to seal records for
14 class A offenses made pursuant to subsection (11) of this section that
15 is filed on or after July 1, 1997, unless:

16 (i) Since the last date of release from confinement, including
17 full-time residential treatment, if any, or entry of disposition, the
18 person has spent five consecutive years in the community without
19 committing any offense or crime that subsequently results in an
20 adjudication or conviction;

21 (ii) No proceeding is pending against the moving party seeking the
22 conviction of a juvenile offense or a criminal offense;

23 (iii) No proceeding is pending seeking the formation of a diversion
24 agreement with that person;

25 (iv) The person has not been convicted of a sex offense; and

26 (v) Full restitution has been paid.

27 (b) The court shall not grant any motion to seal records for class
28 B, C, gross misdemeanor and misdemeanor offenses and diversions made
29 under subsection (11) of this section unless:

30 (i) Since the date of last release from confinement, including
31 full-time residential treatment, if any, entry of disposition, or
32 completion of the diversion agreement, the person has spent two
33 consecutive years in the community without being convicted of any
34 offense or crime;

35 (ii) No proceeding is pending against the moving party seeking the
36 conviction of a juvenile offense or a criminal offense;

37 (iii) No proceeding is pending seeking the formation of a diversion
38 agreement with that person;

1 (iv) The person has not been convicted of a sex offense; and

2 (v) Full restitution has been paid.

3 (13) The person making a motion pursuant to subsection (11) of this
4 section shall give reasonable notice of the motion to the prosecution
5 and to any person or agency whose files are sought to be sealed.

6 (14)(a) If the court grants the motion to seal made pursuant to
7 subsection (11) of this section, it shall, subject to subsection (23)
8 of this section, order sealed the official juvenile court file, the
9 social file, and other records relating to the case as are named in the
10 order. Thereafter, the proceedings in the case shall be treated as if
11 they never occurred, and the subject of the records may reply
12 accordingly to any inquiry about the events, records of which are
13 sealed. Any agency shall reply to any inquiry concerning confidential
14 or sealed records that records are confidential, and no information can
15 be given about the existence or nonexistence of records concerning an
16 individual.

17 (b) In the event the subject of the juvenile records receives a
18 full and unconditional pardon, the proceedings in the matter upon which
19 the pardon has been granted shall be treated as if they never occurred,
20 and the subject of the records may reply accordingly to any inquiry
21 about the events upon which the pardon was received. Any agency shall
22 reply to any inquiry concerning the records pertaining to the events
23 for which the subject received a pardon that records are confidential,
24 and no information can be given about the existence or nonexistence of
25 records concerning an individual.

26 (15) Inspection of the files and records included in the order to
27 seal may thereafter be permitted only by order of the court upon motion
28 made by the person who is the subject of the information or complaint,
29 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of
30 this section.

31 (16) Any adjudication of a juvenile offense or a crime subsequent
32 to sealing has the effect of nullifying the sealing order. Any
33 charging of an adult felony subsequent to the sealing has the effect of
34 nullifying the sealing order for the purposes of chapter 9.94A RCW.
35 The administrative office of the courts shall ensure that the superior
36 court judicial information system provides prosecutors access to
37 information on the existence of sealed juvenile records.

1 (17)(a)(i) Subject to subsection (23) of this section, all records
2 maintained by any court or law enforcement agency, including the
3 juvenile court, local law enforcement, the Washington state patrol, and
4 the prosecutor's office, shall be automatically destroyed within ninety
5 days of becoming eligible for destruction. Juvenile records are
6 eligible for destruction when:

7 (A) The person who is the subject of the information or complaint
8 is at least eighteen years of age;

9 (B) His or her criminal history consists entirely of one diversion
10 agreement or counsel and release entered on or after June 12, 2008;

11 (C) Two years have elapsed since completion of the agreement or
12 counsel and release;

13 (D) No proceeding is pending against the person seeking the
14 conviction of a criminal offense; and

15 (E) There is no restitution owing in the case.

16 (ii) No less than quarterly, the administrative office of the
17 courts shall provide a report to the juvenile courts of those
18 individuals whose records may be eligible for destruction. The
19 juvenile court shall verify eligibility and notify the Washington state
20 patrol and the appropriate local law enforcement agency and
21 prosecutor's office of the records to be destroyed. The requirement to
22 destroy records under this subsection is not dependent on a court
23 hearing or the issuance of a court order to destroy records.

24 (iii) The state and local governments and their officers and
25 employees are not liable for civil damages for the failure to destroy
26 records pursuant to this section, unless such failure pertains to
27 records relating to a matter for which the subject has received a full
28 and unconditional pardon.

29 (b) All records maintained by any court or law enforcement agency,
30 including the juvenile court, local law enforcement, the Washington
31 state patrol, and the prosecutor's office, shall be automatically
32 destroyed when the subject of those records receives a full and
33 unconditional pardon by the governor.

34 (c) A person eighteen years of age or older whose criminal history
35 consists entirely of one diversion agreement or counsel and release
36 entered prior to June 12, 2008, may request that the court order the
37 records in his or her case destroyed. The request shall be granted,

1 subject to subsection (23) of this section, if the court finds that two
2 years have elapsed since completion of the agreement or counsel and
3 release.

4 ~~((c))~~ (d) A person twenty-three years of age or older whose
5 criminal history consists of only referrals for diversion may request
6 that the court order the records in those cases destroyed. The request
7 shall be granted, subject to subsection (23) of this section, if the
8 court finds that all diversion agreements have been successfully
9 completed and no proceeding is pending against the person seeking the
10 conviction of a criminal offense.

11 (18) If the court grants the motion to destroy records made
12 pursuant to subsection (17)~~((b) or))~~ (c) or (d) of this section, it
13 shall, subject to subsection (23) of this section, order the official
14 juvenile court file, the social file, and any other records named in
15 the order to be destroyed.

16 (19) The person making the motion pursuant to subsection (17)~~((b)
17 or))~~ (c) or (d) of this section shall give reasonable notice of the
18 motion to the prosecuting attorney and to any agency whose records are
19 sought to be destroyed.

20 (20) Any juvenile to whom the provisions of this section may apply
21 shall be given written notice of his or her rights under this section
22 at the time of his or her disposition hearing or during the diversion
23 process.

24 (21) Nothing in this section may be construed to prevent a crime
25 victim or a member of the victim's family from divulging the identity
26 of the alleged or proven juvenile offender or his or her family when
27 necessary in a civil proceeding.

28 (22) Any juvenile justice or care agency may, subject to the
29 limitations in subsection (23) of this section and (a) and (b) of this
30 subsection, develop procedures for the routine destruction of records
31 relating to juvenile offenses and diversions.

32 (a) Records may be routinely destroyed only when the person the
33 subject of the information or complaint has attained twenty-three years
34 of age or older or pursuant to subsection (17)(a) of this section.

35 (b) The court may not routinely destroy the official juvenile court
36 file or recordings or transcripts of any proceedings.

37 (23) Except for subsection (17)(b) of this section, no identifying
38 information held by the Washington state patrol in accordance with

1 chapter 43.43 RCW is subject to destruction or sealing under this
2 section. For the purposes of this subsection, identifying information
3 includes photographs, fingerprints, palmprints, soleprints, toeprints
4 and any other data that identifies a person by physical
5 characteristics, name, birthdate or address, but does not include
6 information regarding criminal activity, arrest, charging, diversion,
7 conviction or other information about a person's treatment by the
8 criminal justice system or about the person's behavior.

9 (24) Information identifying child victims under age eighteen who
10 are victims of sexual assaults by juvenile offenders is confidential
11 and not subject to release to the press or public without the
12 permission of the child victim or the child's legal guardian.
13 Identifying information includes the child victim's name, addresses,
14 location, photographs, and in cases in which the child victim is a
15 relative of the alleged perpetrator, identification of the relationship
16 between the child and the alleged perpetrator. Information identifying
17 a child victim of sexual assault may be released to law enforcement,
18 prosecutors, judges, defense attorneys, or private or governmental
19 agencies that provide services to the child victim of sexual assault.

20 NEW SECTION. **Sec. 4.** RCW 13.50.050 (14)(b) and (17)(b) apply to
21 all records of a full and unconditional pardon and should be applied
22 retroactively as well as prospectively."

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23 On page 1, line 1 of the title, after "records;" strike the
24 remainder of the title and insert "amending RCW 13.50.050; and creating
25 new sections."

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